

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Angel Rivera, on behalf of himself and others similarly
situated in the proposed FLSA Collective Action,

Plaintiff,

- against -

787 Coffee LLC, and Brandon Pena,

Defendants.

Case No. 1:22-cv-01596-JPO

**LOCAL CIVIL RULE 56.1 STATEMENT OF MATERIAL FACTS IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGEMENT**

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Defendants, 787 Coffee LLC, and Brandon Pena, by their attorneys, Seo Law Group, PLLC, in support of their motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, submits the following Statement of Material Facts¹ pursuant to Rule 56.1 of the Local Civil Rules of the United States District Court for the Southern District of New York:

1. Brandon Pena is the founder and CEO of 787 Coffee LLC. (Exhibit E: Pena Depo Tr. 21:2-3).
2. 787 Coffee opened the first coffee shop on November 18, 2018, and Brandon Pena officially became an employee of 787 Coffee since January 2019. (Exhibit E: Pena Depo Tr. 28:14-23).
3. The baristas at 787 Coffee are comprised of “shop-leader baristas” and “non-leader baristas” (aka, “just barista”). (Exhibit E: Pena Depo Tr. 65:5-12).
4. The baristas at 787 Coffee were not allowed to work over 40 hours a week. But if any of the baristas performed unauthorized overtime work without permission, they were paid for their overtime hours after receiving a warning from 787 Coffee. (Exhibit E: Pena Depo Tr. 65:13-21; Pena Aff. ¶10).
5. Matt Rosenbaum, Sheridan Plunkett, Kienan Ludke, and Isis Gamble worked as just baristas and/or “non-leader baristas” for 787 Coffee. (Pena Aff. ¶¶8, 12)
6. Matt Rosenbaum worked from August 2021 until December 18, 2021 as a non-leader barista at 787 Coffee and constantly worked less than 40 hours per week while working for 787 Coffee. (Pena Aff. ¶¶13, 14)

¹ Counsel noted that she provided a word-version of the Rule 56.1 Statement to the opposing party pursuant to Your Honor’s Individual Rules, but was unable to receive any “reproduced” version of Rule 56.1 Statement at the time of filing.

7. Sheridan Plunkett worked from September 2021 until March 2022 as a non-leader barista at 787 Coffee and constantly worked less than 40 hours per week while working for 787 Coffee. (Pena Aff. ¶¶15, 16)
8. Kienan Ludke worked from February 2022 until May 2022 for 787 Coffee as a non-leader barista at 787 Coffee and constantly worked less than 40 hours per week while working for 787 Coffee. (Pena Aff. ¶¶17, 18)
9. Isis Gamble worked from February 2022 until June 2022 for 787 Coffee as a non-leader barista at 787 Coffee and constantly worked less than 40 hours per week while working for 787 Coffee. (Pena Aff. ¶¶19, 20)

As to Matt Rosenbaum

10. Matt Rosenbaum worked as a barista at 787 Coffee and his duties consisted of making drinks and serving customers. (Exhibit A: Rosenbaum Depo Tr. 49:7-10).
11. Matt Rosenbaum did not work over 40 hours per week at 787 Coffee. (Exhibit A: Rosenbaum Depo Tr. 49:4-6)
12. At 787 Coffee, Matt Rosenbaum generally worked between 20 and 21 hours per week or 20 to 30 hours per week depending on the number of shifts he performed. (Exhibit A: Rosenbaum Depo Tr. 48:17-25; 49:2-3)
13. Matt Rosenbaum does not have any overtime claims. (Exhibit A: Rosenbaum Depo Tr. 39:8-10; 14-15).

As to Sheridan Plunkett

14. Sheridan Plunkett worked as a part-time barista at 787 Coffee. (Exhibit B: Plunkett Depo Tr. 44:18-21).

15. As a part-time barista, Sheridan Plunkett worked for 3 to 4 days per week from 6:30 a.m. to 1:30 p.m. -1:45 p.m. (or 7 hours per day); or from 1:45 p.m. to 8:00 p.m. – 8:30 p.m. (or around 7.5 hours per day). (Exhibit B: Plunkett Depo Tr. 44:22-25; 57:12-20).
16. Sheridan Plunkett did not work more than 40 hours a week while working at 787 Coffee because she was in school. (Exhibit B: Plunkett Depo Tr. 41:14-16).

As to Kienan Ludke

17. Kienan Ludke worked as a barista while he was working at 787 Coffee from February 21, 2022 until May 17, 2022. (Exhibit C: Ludke Depo Tr. 17:16-18; 34:15-17; 43:6-11).
18. While working at 787 Coffee, Kienan Ludke was required to track his working hours. Additionally, Kienan Ludke tracked his working hours by taking a picture of his work schedule printed in a hard-copy form displayed “on the board” at 787 Coffee. (Exhibit C: Ludke Depo Tr. 38:10-16).
19. Kienan Ludke worked on average, 30 to 40 hours per week while working at 787 Coffee. (Exhibit C: Ludke Depo Tr. 38:17-23).
20. From February 2022 until Kienan Ludke’s last day of his employment at 787 Coffee, he performed “zero days” or “zero weeks” of overtime work, and he did not work more than 40 hours a week based on his recollection. (Exhibit C: Ludke Depo Tr. 48:16-21, 25; 49:2-4).

As to Isis Gamble

21. Isis Gamble worked as a barista at 787 Coffee from February 2022 to June 2022 (Exhibit D: Gamble Depo Tr. 10: 6-8. 12:25; 13:2-3;18:13-18).
22. Isis Gamble started working at 787 Coffee while she was working for the university as she was looking for a part-time work to “supplement” her grad school. (Exhibit D: Gamble Depo Tr. 10:3-11; 19: 11-15).

23. While working at 787 Coffee, Isis Gamble typically worked from 6:30 a.m. to about 1:30 p.m. for 4 or 5 days a week on average. She initially started working for 5 days per week but “went down” to 4 days per week because of her increased schoolwork. (Exhibit D: Gamble Depo Tr. 16:16-25; 17:2-8, 9-15).
24. Isis Gamble worked for the university on the weekdays between Monday and Friday during the office hours between 9 [a.m.] to 5 [p.m.]. When Isis Gamble performed 787 Coffee’s opening shift, she had afternoon meetings with the university’s students at 2:00 p.m. (Exhibit D: Gamble Depo Tr. 11:14-23).
25. At 787 Coffee, Isis Gamble was required to clock-in and clock-out using the system called, “Square reader,” and the number of hours reported in the “Square reader” was an accurate representation of the number of hours she worked. (Exhibit D: Gamble Depo Tr. 29:17-25; 30:2, 15-17).
26. Isis Gamble worked 25 to 30 hours per week on average, at 787 Coffee. (Exhibit D: Gamble Depo Tr. 22: 22-25; 23:2-3).
27. Isis Gamble has never worked more than 40 hours per week for 787 Coffee. (Exhibit D: Gamble Depo Tr. 16: 3-5).

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Flushing, New York

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